



Policy 7: Failure to Implement

(Amended to replace Board Resolution 15-95)

Buffer Law Implementation

August 25, 2016

Policy

It is BWSR's policy that failure to implement/non-implementation of the Buffer Law is defined as when a county, watershed district, metropolitan watershed management organization or SWCD has been determined not to have been implementing one or more of the statutory duties listed below.

Activities not Subject to Failure to Implement

All other activities conducted by a SWCD, county, watershed district, or metropolitan water management organization, separately or jointly, that is associated with coordinating activities, collecting and sharing information, education and outreach to landowners, providing financial assistance, and carrying out other statutory authorities are not to be considered required implementation under Minn. Stat. 103F.48 and as such will not be considered as part of a failure to implement/non-implementation determination by BWSR.

Background

Mn Statutes 103F.48, as amended by Laws of Minnesota 2016, Chapter 85, establishes a requirement for landowners to maintain a buffer on or before the dates and widths as follows:

- November 1, 2017 – 50-foot average width, 30-foot minimum width, buffers must be in place on lands adjacent to public waters as identified and mapped on a buffer protection map (Subd. 2(e)(1))
- November 1, 2018 – 16.5-foot minimum width buffers must be in place on lands adjacent to public ditches as identified and mapped on a buffer protection map (Subd. 2(e)(2))

This law also includes prescribed assistance and monitoring roles for SWCDs and elected enforcement authorities for Counties and Watershed Districts. The law also provides for a Board of Water and Soil Resources (BWSR) compliance role where a county or watershed district do not accept jurisdiction and for BWSR to take steps if a local government fails to implement their prescribed or elected duties.

Policy Need:

- 1) Local governments required to carry out duties or elect jurisdiction under the Buffer Law need to know what the standard is for sufficient implementation.
- 2) To provide a consistent basis for potential BWSR actions to withhold funding for insufficient implementation of statutory responsibilities.

Statutory Basis

The relevant provisions are:

Minnesota Statutes 103F.48, Subd. 8. **Funding subject to withholding.**

The board may withhold funding from a local water management authority with jurisdiction or a soil and water conservation district that fails to implement this section, or from a local water management authority that fails to implement subdivision 4. Funding may be restored upon the board's approval of a corrective action plan.

Minnesota Statutes 103F.48, Subd. 7. **Corrective actions.**

(b) A county or watershed district exercising jurisdiction under this subdivision and the enforcement authority granted in section 103B.101, subdivision 12a, shall affirm their jurisdiction and identify the ordinance, rule, or other official controls to carry out the compliance provisions of this section 5 and section 103B.101, subdivision 12a, by notice to the board prior to March 31, 2017. A county or watershed district must provide notice to the board at least 60 days prior to the effective date of a subsequent decision on their jurisdiction.

(c) (2nd sentence) If a county or watershed district with jurisdiction over the noncompliant site has not adopted a plan, rule, ordinance, or official control under this paragraph, the board must enforce this section under the authority granted in section 103B.101, subdivision 12a.

Minnesota Statutes 103F.48, Subd. 8 applies to SWCDs and local water management authorities. Local water management authority is defined as (Minn. Stat. 103F.48, Subd 2(g)): a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as a local water management authority under chapter 103B or 103D. Therefore the local governments that Subd. 8 applies to are: SWCDs, counties, watershed districts, and metropolitan watershed management organizations.

Minnesota Statutes 103F.48 establish the following authorities and responsibilities for local governments to implement the Buffer Law:

SWCDs

- A. May issue a validation of compliance when requested by a landowner. (Subd. 3(d))
- B. Must develop, adopt and submit to each local water management authority a summary of watercourses (aka "other watercourses") by July 1, 2017 for inclusion in the local water management authorities' plan. (Subd. 4)
- C. Must assist landowners with implementation of the water resource riparian protection requirements including: planning, technical assistance, implementation of approved alternative practices, and tracking progress towards compliance with the requirements provided in Minnesota Statutes 103F.48, Subd. 3. (Subd. 6)
- D. Must notify the county or watershed district with jurisdiction when it determines a landowner is not in compliance. (Subd. 7)
- E. Must grant a conditional waiver to a landowner: (a) who has applied for and maintained eligibility for financial assistance within one year of the compliance dates in Minnesota Statutes 103F.48, subd. 3(e); or (b) are subject to a drainage proceeding. (Laws of Minnesota 2015, 1st Special Session, Chapter 4, Article 4, Section 146).

Counties and Watershed Districts

- A. Must incorporate the SWCD summary of watercourses (aka "other watercourses") recommendations into its comprehensive local water management plan by July 1, 2018. (Subd. 4)
- B. If electing jurisdiction to enforce the buffer requirement as identified on the Buffer Protection Map, must provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline to meet the riparian protection requirements when notified by the SWCD that a landowner is not in compliance. A copy of the corrective action must be provided to BWSR. (Subd. 7(a))

- C. Elect to accept jurisdiction* and identify the ordinance, rule, or other official controls to carry out the compliance provisions of section 103F.48 and section 103B.101, subdivision 12a, by notice to the board prior to March 31, 2017 (Subd. 7(b)). May adopt an administrative penalty order plan. (Subd. 7(b))

* If a county or watershed district with jurisdiction over the noncompliant site has not adopted a plan, rule, ordinance, or official control under this paragraph, the board must enforce this section under the authority granted in section 103B.101, subdivision 12a.

Metropolitan Watershed Management Organizations

- A. Must incorporate the SWCD summary of watercourses (aka “other waters”) recommendations into its comprehensive watershed management plan by July 1, 2018. (Subd. 4)